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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/996,061	11/27/2001	Max Schaldach	117163.00032	3174
21324 7590 05/10/2007 HAHN LOESER & PARKS, LLP One GOJO Plaza Suite 300 AKRON, OH 44311-1076			EXAMINER THALER, MICHAEL H	
			ART UNIT 3731	PAPER NUMBER
			NOTIFICATION DATE 05/10/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

09/996,061

Applicant(s)

SCHALDACH ET AL.

Examiner

Michael Thaler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 21-53 is/are pending in the application.
- 4a) Of the above claim(s) 7, 9-13, 35-40, 42-50 and 53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 14-17, 21-34, 41, 51 and 52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 7, 9-13, 35-40, 42-50 and 53 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on May 19, 2004. Claim 53 does not read on the elected species of figure 1. Although the elected species of figure 1 includes a hardening agent, it does not include an adhesive (which is disclosed as being a different material).

Claims 1, 2, 5, 6, 25, 29 and 30 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Turi (5,556,414). Turi, in figures 1-7, discloses a stent 26 (Vein 26 may be considered to be a stent since it is inserted into a blood vessel and inherently aids in supporting the vessel due to its inherent stiffness.) for a vessel (col. 1, lines 40-42) consisting essentially of a tubular body 26 for expansion from a first condition to a second condition (col. 8, lines 1-5) wherein in the first condition, the stent being configured such that a first part of the stent is disposed radially inwardly relative to a second part of the stent (The vein 26, prior to being compressed about catheter 72, has a diameter which is equal to or greater than the diameter of the body passageway into which

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it is inserted as indicated from col. 4, line 59 to col. 5, line 7. When the vein 26 is compressed about catheter 72, it collapses and forms folds 27 as indicated in col. 7, lines 21-26 since, unlike member 22, it is not split along its longitudinal axis. In other words, when member 22 collapses, it does not form folds since loops 62 and 64 can overlap to accommodate its reduction in diameter as indicated in col. 6, line 62 to col. 7, line 1. However, when vein 26 collapses, it has no similar loops 62 or 64 and therefore must form folds 27 in the circumferential direction to accommodate its reduction in diameter. One of these folds is the claimed first part of the stent.) and wherein in the second condition, at least a portion of the first part changes its position relative to the second part from its position in the condition such that the at least portion of the first part is not disposed radially inwardly relative to a second part of the stent (when the vein unfolds into a cylindrical configuration), wherein the stent consists essentially of human or animal tissue. Alternatively, it would have been obvious that the tissue of the stent 26 has adequate elasticity since it expands with the cylindrical member 22 and since veins are elastic to some extent. As to claims 6 and 30, Turi, discloses hardening agent (the portion of the adhesive

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described in col. 5, lines 49-52 which hardens the adhesive as it cures or dries).

Claims 4, 8, 22, 23, 27, 32, 34 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turi (5,556,414) for the reasons set forth on page 4 of the Office Action mailed June 28, 2006.

Claims 3, 21, 24, 26, 28, 31, 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turi (5,556,414) in view of Atala (2003/0208279) for the reasons set forth on pages 4 and 5 of the Office Action mailed June 28, 2006.

Claims 14-17, 51 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turi (5,556,414) in view of Berg et al. (5,680,873) for the reasons set forth on pages 5 and 6 of the Office Action mailed June 28, 2006.

Applicant's arguments filed Feb. 23, 2007 have been fully considered but they are not persuasive. The term "consisting essentially of" does not preclude the claimed part from being a component of a larger assembly. For example, an automobile brake could be defined as "consisting essentially of" certain elements. However, this brake could be part of a larger assembly (i.e. an automobile). A reference which discloses the same brake as a component of an automobile could be applied against such a claim. Similarly, although the Turi stent 26 is

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a component of a larger assembly (which includes another stent 22), the term "consisting essentially of" does not preclude this reference from being applied against the claims since the stent 26 consists essentially of a tubular body which consists essentially of human or animal tissue. Vein 26 of Turi may be considered to be a stent since it is inserted into a blood vessel and inherently aids in supporting the vessel due to its inherent stiffness. Although the vein may not have as much stiffness as some other stents, the amount of stiffness has not been claimed. Further, vein 26 of Turi, prior to being attached to stent 22, if inserted into a vessel, would inherently support the vessel to some extent due to its inherent stiffness.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571) 272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

mht



MICHAEL THALER
PRIMARY EXAMINER
ART UNIT 3731